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Number 92-241

UNITED STATES SUPREME COURT

OCTOBER, 1992 TERM

HELON DENISE CRAWFORD, ET AL.,

PETITIONERS,

v.

WILLIAM LEAHY, ET AL.,

RESPONDENTS,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the Court of Appeals of Maryland's interpretation of the Maryland Health Care Malpractice Claims Act [Maryland Courts and Judicial Proceedings Code Annotated, §§3-2A-01 through 3-2A-09 (1989, 1991 Cum. Supp.)] repugnant to the United States Constitution or the laws of the United States in its holding that the Petitioners, who sought judicial review of a health claims arbitration panel award in their favor, could not subdivide the award into a finding of liability and an assessment of damages and obtain review of only the damages portion of the award?

LIST OF ALL PARTIES

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Respondents.

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GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS INVOKED

The Petitioners seek to invoke the jurisdiction of this Court under 28 U.S.C. §1257(a). As noted herein, however, no Federal question was raised or presented to the state court for consideration at any time and thus this Court lacks jurisdiction.

The opinion of the Court of Appeals of Maryland for which review is sought was entered on April 9, 1992.

The Petitioners' pro se Motion For Reconsideration was denied by the Court of Appeals of Maryland on May 8, 1992.

The Petitioners timely filed their Petition For Writ Of Certiorari pro se on August 6, 1992.

The Petition For Writ of Certiorari was received by the Respondents on August 6, 1992.

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioners apparently contend that the Fourteenth Amendment to the United States Constitution, Section 1, is involved in their Petition For Writ Of Certiorari. This section provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

The Petitioners contend that §§ 3-2A-05 and 3-2A-06 of the Maryland Health Care Malpractice Claims Act [Maryland Courts and Judicial Proceedings Code Annotated, §§3-2A-05 and 3-2A-06 (1989, 1991 Cum. Supp.)] are involved in their Petition for Writ of Certiorari. These two sections, together with the Act's definitions, are set forth in the Appendix.

STATEMENT OF THE CASE

This case arises out of a medical malpractice claim asserted by the Petitioners, Helon D. Crawford and her husband, Alan Crawford, against the Respondents, William Leahy, M.D. and his professional association, Neurological Medicine, P.A. As required under Maryland law, the Petitioners' claim was originally arbitrated before a Health Claims Arbitration panel. Although the Petitioners obtained a Health Claims Arbitration award in their favor, they were dissatisfied with the amount of money awarded to them and sought judicial review of the award from the Circuit Court for Prince George's County, Maryland. However, in seeking their review of the arbitration panel's award, the Petitioners attempted to reject the arbitration award

only as it related to damages.[1] To accomplish this, the Petitioners filed a pleading entitled "Notice Of Action To Nullify Award As To Damages Only." In conjunction with this Notice, the Petitioners also filed a Complaint which alleged that Dr. Leahy had been negligent in his care and treatment of Mrs. Crawford, and which further demanded a jury trial "on all issues herein."

Dr. Leahy responded by immediately filing a "Motion To Strike Or, In The Alternative, For Complete Rejection Of The Arbitration Award," arguing that the

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[1] The award made by the Health Claims Arbitration panel was in the amount of $37,768.00 against Respondents. In the trial which followed the Petitioners' rejection of this award, the jury found that Dr. Leahy had not been negligent and awarded nothing to the Petitioners.

Petitioners' attempt to reject only the damages determination of the arbitration award was not authorized by the controlling state statute. The trial judge agreed, noting that there is "no authority to allow an appeal from Health Claims Arbitration on the issue of damages alone." [Petitioners' Brief, A-57]. In response to this ruling, the Petitioners amended their Nctice of Rejection and filed an "Amended Notice Of Action To Nullify Award," which rejected the award of the Health Claims Arbitration panel as it relates to liability and damages. They also refiled their Complaint which, as noted above, contained allegations of negligence against Dr. Leahy. Dr. Leahy answered the Amended Complaint by denying liability.

The Petitioners subsequently asked the trial judge to reconsider his decision

that once an award is rejected by either party, the case proceeds de novo on issues of both liability and damages. The trial judge denied Petitioners' request and, on January 28, 1991, the case proceeded to trial before a jury. In support of their case, the Petitioners presented evidence which included not only the arbitration award, but also expert testimony on the issue of Dr. Leahy's alleged negligence. At the end of trial, the jury returned a special verdict finding that Dr. Leahy was not negligent in his care and treatment of Mrs. Crawford.

The Petitioners then noted an appeal to the Court of Special Appeals of Maryland. By writ of certiorari, the Court of Appeals of Maryland took jurisdiction of the case to decide the proper scope of appeal from an Arbitration award under the Maryland Health Care

Malpractice Claims Act. On April 9, 1992, the Court held, in part, the following:

> In this case we are once more called upon to construe the Health Care Malpractice Claims Act, Maryland Code (1989, 1991 Cum. Supp.) 3-2A-01 through 3-2A-09 of the Courts and Judicial Proceedings Article (the "Act"). The narrow question presented is whether an award of the Health Claims Arbitration panel in favor of the Claimant on the merits can be subdivided into an award finding liability and an award assessing damages, permitting the Claimant to seek judicial review of only the amount of damages awarded. We shall answer that question in

the negative and affirm the judgement of the trial court.

[Petitioners' Brief, A-5].

The Court of Appeals of Maryland explained its decision by analyzing the statutory language and noting the absence of any case law permitting rejection of only the damage determination of an arbitration award, and then wrote in conclusion:

> The trial court properly applied the Act and preserved all parties' rights to a judicial determination on liability and damages on the merits. This ruling not only satisfies justiciability and adversariness requirements, but also preserves and promotes the General Assembly's goal of establishing a reliable and economical system

for resolution of malpractice claims.

[Petitioners' Brief, pp. A-46. A-47].

The Petitioners then moved pro se for reconsideration, and this was denied by the Court of Appeals of Maryland on May 8, 1992. Within the ninety days permitted by Supreme Court Rule 13, the Petitioners filed pro se the instant Petition For Writ Of Certiorari to the Court of Appeals of Maryland. The Respondents now file their Brief in opposition thereto.[2]

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[2] In accord with Supreme Court Rule 15, the Respondents take issue with the following misstatements of fact contained in the Petition for Writ of Certiorari. First, there is no evidence whatsoever that Mrs. Crawford had "burns over her entire body" or suffered from "internal injuries." [Petitioners' Brief, p. 5]. Second, Dr. Leahy appropriately

diagnosed Mrs. Crawford as suffering from complex partial seizure disorder, and Dr. Fisher's alleged statements, as set forth on pages 6 and 7 of the Petitioners' Brief, were not introduced at trial and are not a part of the record in this case. In truth, Dr. Fisher authored a report, which was not made a part of the record, wherein he informed Mrs. Crawford that her case against Dr. Leahy "was not very strong." Third, Mrs. Crawford was never required at trial to defend herself. [Petitioners' Brief, p. 20]. In point of fact, as the plaintiff was the party rejecting the Arbitration award, the burden of proof was upon Mrs. Crawford to prove her case of medical malpractice. However, the trial court improperly instructed the jury that the burden of proof was upon Dr. Leahy to prove that he

SUMMARY OF THE ARGUMENT

1. The Petitioners' claim that the Maryland Health Care Malpractice Claims Act, as applied by the Court of Appeals of Maryland, is repugnant to Federal law because it contravenes a policy of the United States, was never raised in the state courts below and, therefore, is not properly before this Court for consideration.
2. This Honorable Court lacks jurisdiction over this matter because the Federal law purportedly invoked by Petitioners is not the Constitution, a treaty or statute of

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was not negligent. This turned out to be harmless error because, even under this heightened burden, the jury found that Dr. Leahy was not negligent.

the United States, but a public policy which is still evolving.

3. The Court of Appeals of Maryland correctly decided that judicial review of a Health Care Malpractice Claims Arbitration award must be on the award as a whole, rather than on its component parts of liability and damages, and this approach rationally achieves the legislative purpose of providing a reliable and less costly alternative to medical malpractice litigation.

ARGUMENT

(i) The Petitioners' Federal Question was Never Raised in the State Courts Below.

The principal reason that the Petition for Writ of Certiorari should be denied is that nowhere below, neither in the trial court nor in the Court of Appeals of Maryland, have the Petitioners raised the question now presented to this Court. Until now, Petitioners' appeal turned entirely upon how the judicial review section of the Maryland Health Care Malpractice Claims Act should be applied, not whether its application was repugnant to the Constitution, treaties or laws of the United States. This Court has long-required that, before a writ of certiorari will be issued, the state statute's

repugnancy to the Constitution, treaties or laws of the United States must be brought to the attention of the state court below. See Street v. New York, 394 U.S. 376, 22 L.Ed.2d 572, 89 S.Ct. 1354 (1969), on remand, 24 N.Y.2d 1026, 302 N.Y.S.2d 848, 250 N.E.2d 250 (1969); Raley v. Ohio, 360 U.S. 423, 3 L.Ed.2d 1344, 79 S.Ct. 1257 (1959). The record filed by a petitioner must clearly show that any claim raised under a Federal statute or the United States Constitution was presented to the state courts, and that the state courts were apprised of the nature and substance of the Federal claim at the time and in the manner required by state law. Webb v. Webb, 451 U.S. 493, 498-99, 68 L.Ed.2d 392, 398, 101 S.Ct. 1889, 1893-94 (1981).

This was never done in the Petitioners' case here.[3] Indeed, neither the Fourteenth Amendment nor any Federal statute, treaty, or even policy was mentioned to the trial court or to the Court of Appeals of Maryland. The Petitioners' question, having not been raised below, is not properly before this Court.

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[3] Set forth in the Appendix to this brief at page A-21 are the Question Presented and Argument captions contained in the Brief of Appellant filed by the Petitioners in the Court of Appeals of Maryland. In conjunction with the Opinions of the Court of Appeals of Maryland (Petitioners' Brief, pp. A-4 through A-47), these demonstrate that the Petitioners' alleged Federal question was not previously raised in the state court below.

(ii) The Court Lacks Jurisdiction to Hear the Petitioners' Claim that the Maryland Health Care Malpractice Claims Act is Repugnant to a Policy of the United States.

Section 1257(a) of the United States Code [28 U.S.C. §1257(a)] provides that:

> Final judgments and decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where the validity of a statute of any State is drawn into question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, . . .

The Petitioners suggest in their brief that the judgment of the Court of Appeals of Maryland "unfairly threatens the goal of Federal uniformity in providing quality health care for all Americans." [Petitioners' Brief, p. 39.] In support of this contention, the Petitioners cite only the President of the United States' express concern that significant portions of the population do not have access to quality health care, his Health Care Liability Reform And Quality Of Care Improvement Act of 1991, which was presented to Congress on May 15, 1991, and the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11101, et seq.]. Significantly, the 1986 Act addresses only professional peer review and expressly states that "[n]othing in this title shall be construed as affecting in any manner the rights and remedies

afforded patients under any provision of Federal or state law to seek redress for any harm or injury suffered as a result of" a health care provider's negligence. Moreover, the 1991 bill has yet to be acted upon by Congress. Clearly, the policy of the United States toward health care is far from decided, as seen in the debate of the current presidential campaign.

Notwithstanding the Petitioners' view, a state court's decision which may be contrary to the President's ideas or proposed legislation does not fall within this Court's jurisdiction. Simply stated, there has been no showing that any law or policy of the United States has been so violated by the decision of the Court of Appeals of Maryland as to warrant an exercise of this Court's jurisdiction pursuant to 28 U.S.C. 1257(a).

While this Court may consider the validity of a state statute drawn into question on grounds that it is repugnant to the Constitution, treaties or laws of the United States, repugnancy to an evolving Federal policy is not such a grounds. Accordingly, it is respectfully submitted that this Court lacks jurisdiction to hear the Petitioners' claim. The national health care concerns raised by the Petitioners as a basis for jurisdiction are very much premature. For the present time, policies to address medical malpractice claims are best left in the hands of the states.

(iii) The Decision of the Court of Appeals of Maryland was Correct and Fair to the Petitioners.

The Court of Appeals of Maryland gave careful consideration to the Petitioners' contention that judicial review of the entire arbitration award (liability and damages) increases the costs and amount of litigation necessary to deal with medical malpractice claims. After this consideration, the Court of Appeals of Maryland disagreed with the Petitioners and reached precisely the opposite result:

> When adopted, the Act was intended to hasten determination of medical malpractice claims, resulting in an improved system of justice. In adopting the Act, the Legislature clearly

anticipated that cost and time savings would result if parties frequently accepted the panel determination, either as the final decision or as the basis for payment. See, K. Quinn, The Health Care Malpractice Claims Statute: Maryland's Response To The Medical Malpractice Crisis, 10 U. Balt. L. Rev. 74, 93-94 (1980). The Act's presumption that the arbitration award is correct is specifically intended to deter rejection of panel decisions. See 3-2A-06(d); J. MacAlister & A. Scanlan, Jr., Health Claims Arbitration in Maryland, The Experiment has Failed, 14 U. Balt. L. Rev. 481, 501-02 (1985).

Permitting rejection of damages alone, however, would have the opposite effect. If a plaintiff may reject only the damage portion of the award, then defendants will likely reject every panel determination of their liability. If rejection becomes a matter of course, and court action routine, there is no prospect of achieving the Act's fundamental purpose of more economical justice.

* * *

If the claimant is permitted to reject only damages, however, the incentive to accept the amount of the arbitration award is dramatically diminished, given

that at trial, liability would be a certainty, and not merely presumed correct. Thus, "the Rule urged by [the Crawfords] encourages resort to the courts by providing a claimant with an unfair advantage." Su v. Weaver, 313 Md. at 381, 545 A.2d at 697. With no risk of an adverse jury verdict on liability, rejection of damages by the claimant becomes a certainty and settlement resulting from the arbitration award a rarity. These consequences defeat the primary purpose of the Act: to reduce costs by creating a reliable and acceptable alternative to a medical malpractice action in court.

[Petitioners' Brief, pp. A-42 through A-46.]

Thus, not only is there no Federal question involved, but the state statute at issue is one which rationally achieves its purpose of providing a reliable and less costly alternative to medical malpractice litigation. The statute is fair to claimants and health care providers alike. As the decision of the Court of Appeals of Maryland is both fair and correct, this Court should deny the Petitioners' Petition for Writ of Certiorari.

CONCLUSION

The Petitioners have raised no Federal question, and simply suggest that the Maryland Health Care Malpractice Claims Act is repugnant to the "health care" policy of the United States. Even if the contravention of this evolving policy was within the Court's jurisdiction, its consideration through this case would be grossly inadequate and premature. Moreover, the Petitioners did not raise their alleged Federal question for consideration by either the trial court or the Court of Appeals of Maryland and, accordingly, it is not properly before this Court. Finally, the Court of Appeals of Maryland gave full and careful consideration to the issues raised by the Petitioners and decided them fairly and correctly. For all these reasons, the

Respondents respectfully ask this Court to deny the Petition for Writ of Certiorari to the Court of Appeals of Maryland.

Respectfully submitted,

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APPENDIX

Sections 3-2A-01, 3-2A-05 and 3-2A-06 of the Maryland Health Care Malpractice Claims Act [Maryland Courts and Judicial Proceedings Code Annotated, §§ 3-2A-01, 3-2A-05 and 3-2A-06] are as follows:

§3-2A-01. - Definitions.

(a) **In general.** -- In this subtitle, the following terms have the meanings indicated unless the context of their use requires otherwise.

(b) **Arbitration panel.** -- "Arbitration panel" means the arbitrators selected to determine a health care malpractice claim in accordance with this subtitle.

(c) **Court.** -- "Court" means a circuit court for a county.

(d) **Director.** -- "Director" means the Director of the Health Claims Arbitration Office.

(e) **Health Care Provider.** -- "Health care provider" means a hospital, a related institution as defined in § 19-301 of the Health-General Article, a physician, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical therapist, licensed or authorized to provide one or more health care services in Maryland. "Health care provider" does not mean any nursing institution conducted by and for those who rely upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.

(f) **Medical injury.** -- "Medical injury" means injury arising or resulting from the rendering or failure to render health care. (1990, ch. 357)

§ 3-2A-05. **Arbitration of claim.**

(a) **Issues to be referred by Director to panel chairman and panel.** -- (1) Except as provided under paragraph (2) of this subsection, all issues of law shall be referred by the Director to the panel chairman. All issues of fact shall be referred by the Director to the arbitration panel.

(2) Where a panel chairman has not been appointed or is temporarily unable to serve, and the Director is admitted to the Maryland Bar, the Director may rule on all issues of law arising prior to hearing that are not dispositive to the case and shall include the assessment of costs.

(b) **Application of other sections and Maryland Rules.** -- (1) The provisions of §§ 3-212 through 3-217 of this article

are applicable to proceedings under this subtitle.

(2) Except for the provisions of the Maryland Rules relating to time for the completion of discovery, the provisions of the Maryland Rules relating to discovery are applicable to proceedings under this subtitle. All discovery in any action under this subtitle shall be completed within 270 days from the date on which all defendants have been served, unless extended by the panel chairman for good cause shown.

(3) Properly authenticated hospital records and the records of treating health care providers are admissible without the necessity of calling the physician, subject to reasonable notice and the right of the opposing party to depose.

(c) **Chairman of panel.** -- The attorney member of the panel shall be chairman and he shall decide all prehearing procedures including issues relating to discovery and motions in limine. The chairman shall rule in camera on any motion in limine.

(d) **Testimony by additional experts.** -- A party may not present testimony from more than 2 experts in a designated specialty before an arbitration panel unless the panel chairman, for good cause shown, permits additional experts.

(e) **Determinations.** -- The arbitration panel shall first determine the issue of liability with respect to a claim referred to it. If the arbitration panel determines that the health care provider is not liable to the claimant or claimants the award shall be in favor of the health care provider. If the

arbitration panel determined that the health care provider is liable to the claimant or claimants, it shall then consider, itemize, assess, and apportion appropriate damages against one or more of the health care providers that it has found to be liable. The award shall itemize by category and amount any damages assessed for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future expenses, costs, and losses shall be itemized separately.

(f) **Assessment of costs.** -- The award shall include an assessment of costs, including the arbitrators' fees. If there is no panel determination, the panel chairman shall assess costs.

(g) **Delivery of award to Director; service of copies.** -- The arbitration panel shall make its award and deliver it

to the Director in writing within 1 year from the date on which all defendants have been served and within 10 days after the close of the hearing. The Director shall cause a copy of it to be served on each party within 15 days of having received it from the arbitration panel.

(h) **Application for modification or correction; request for reduction of damages.** -- A party may apply to the arbitration panel to modify or correct an award as to liability, damages, or costs in accordance with § 3-222 of this article. The application may include a request that damages be reduced to the extent that the claimant has been or will be paid, reimbursed, or indemnified under statute, insurance, or contract for all or part of the damages assessed.

The panel chairman shall receive such evidence in support and opposition to

a request for reduction, including evidence of the cost to obtain such payment, reimbursement, or indemnity. After hearing the evidence in support and opposition to the request, the panel chairman may modify the award if satisfied that modification is supported by the evidence. The award may not be modified as to any sums paid or payable to a claimant under any workers' compensation act, criminal injuries compensation act, employee benefit plan established under a collective bargaining agreement between an employer and an employee or a group of employers and a group of employees that is subject to the provisions of the Federal Employee Retirement Income Security Act of 1974, program of the Department of Health and Mental Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1 of the Health-General Article, or as

a benefit under any contract or policy of life insurance or Social Security Act of the United States. An award may not be modified as to any damages assessed for any future expenses, costs, and losses unless the panel chairman orders the defendant or the defendant's insurer to provide adequate security or, if the insurer is authorized to do business in this state, maintains reserves in compliance with rules of the Insurance Commissioner to assure the payment of all such future damages up to the amount by which the award has been modified as to such future damages in the event of termination. Except as expressly provided by Federal statute, no person may recover from the claimant or assert a claim of subrogation against a defendant for any sum included in the modification of an award. (1990, ch. 6, § 2.)

(i) **Confirmation of award.** -- Subject to § 3-2A-06 of this subtitle, the award of the panel shall be final and binding on the parties. After the time for either rejecting or modifying the award has expired the Director may, or, when requested by any party, shall file a copy of the award with the circuit court having proper venue, as provided in Title 6, Subtitle 2 of this article and the court shall confirm the award. Upon confirmation the award shall constitute a final judgment.

(j) **Authority to lengthen or shorten time limitation.** -- Except for time limitations pertaining to the filing of a claim or response, the Director or the panel chairman, for good cause shown, may lengthen or shorten the time limitations prescribed in subsections (b) and (g) of this section and § 3-2A-01 of this

article. (1976, ch. 235, § 1; 1981, ch. 552, 1985, ch. 104; 1986, ch. 640; 1987, ch. 596; 1988, ch. 291.)

§ 3-2A-06. **Judicial review.**

(a) **Rejection of award or assessment of costs.** -- A party may reject an award or the assessment of costs under an award for any reason. A notice of rejection must be filed with the Director and the arbitration panel and served on the other parties or their counsel within 30 days after the award is served upon the rejecting party, or, if a timely application for modification or correction has been filed within 10 days after a disposition of the application by the panel, whichever is greater.

(b) **Action to nullify award or assessment of costs.** -- (1) At or before the time specified in subsection (a) of this section for filing and serving a

notice of rejection, the party rejecting the award shall file an action in court to nullify the award or the assessment of costs under the award and shall file a copy of the action with the Director. Failure to file this action timely in court shall constitute a withdrawal of the notice of rejection. Subject to the provisions of subsection (c) of this section, the procedures applicable to the action including the form and necessary allegations in the initial pleadings shall be governed by the Maryland Rules. The Director need not be named a party to any action under this section.

(2) If any party to the proceeding elects to have the case tried by a jury in accordance with the Maryland Rules, it shall be tried by a jury. Otherwise, the case shall be tried by a judge.

(3) The trial date for each rejection of a panel determination shall have precedence over all cases except criminal matters and workers' compensation appeals.

(4) The clerk of the court in which an action is filed under this subsection shall forward a copy of the action to the State Board of Physician Quality Assurance.

(c) **Modification, correction, or vacation of award or assessment of costs by court.** -- An allegation by any party that an award or the assessment of costs under an award is improper because of any ground stated in § 3-223 (b) or § 3-224 (b) (1), (2), (3), or (4) or § 3-2A-05 (h) of this article shall be made by preliminary motion, and shall be determined by the court without a jury prior to trial. Failure to raise such a

defense by pretrial preliminary motion shall constitute a waiver of it. If the court finds that a condition stated in § 3-223 (b) exists, or that the award or the assessment of costs under an award was not appropriately modified in accordance with § 3-2A-05 (h) of this subtitle, it shall modify or correct the award or the assessment of costs under an award. If the rejecting party still desires to proceed with judicial review, the modified or corrected award shall be substituted for the original award. If the court finds that a condition stated in § 3-224 (b) (1), (2), (3), or (4) exists, it shall vacate the award, and trial of the case shall proceed as if there had been no award.

(d) **Admissibility of award; presumption of correctness.** -- Unless vacated by the court pursuant to

subsection (c), the unmodified arbitration award is admissible as evidence in the judicial proceeding. The award shall be presumed to be correct, and the burden is on the party rejecting it to prove that it is not correct.

(e) **Admissibility of depositions from arbitration proceedings.** -- (1) Depositions taken in the arbitration proceedings shall be as fully admissible as if noticed in court proceedings. Interrogatories and requests for admissions and production of documents in the arbitration proceedings remain binding in the court proceedings, subject to a duty of supplementation.

(2) The provisions of paragraph (1) of this subsection do not affect any rights to discovery on appeal.

(f) **Itemization of certain damages; remittitur.** -- Upon timely request, the

trier of fact shall by special verdict or special findings itemize by category and amount any damages assessed for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future expenses, costs, and losses shall be itemized separately. If the verdict or findings include any amount for such expenses, costs, and losses, a party filing a motion for a new trial may object to the damages as excessive on the ground that the claimant has been or will be paid, reimbursed, or indemnified to the extent and subject to the limits stated in § 3-2A-05 (h) of this subtitle. The Court shall hold a hearing and receive evidence on the objection. If the court finds from the evidence that the damages are excessive on the grounds stated in § 3-2A-05 (h) of this subtitle, it may grant a new trial as to such damages or may deny a

new trial if the claimant agrees to a remittitur of the excess and the order required adequate security when warranted by the conditions stated in § 3-2A-05 (h) of this subtitle. In the event of a new trial granted under this subsection, evidence considered by the court in granting the remittitur shall be admissible if offered at the new trial and the jury shall be instructed to consider such evidence in reaching its verdict as to damages. Upon a determination of those damages at the new trial, no further objection to damages may be made exclusive of any party's right of appeal. Except as expressly provided by Federal law, no person may recover from the claimant or assert a claim of subrogation against a defendant for any sum included in a remittitur or awarded in a new trial on damages granted under this subsection.

Nothing in this subsection shall be construed to otherwise limit the common law grounds for remittitur.

(g) **Assessment of costs.** -- If the verdict of the trier of fact is not more favorable to the party that rejected the arbitration panel's award, than was the award, the costs of the judicial proceedings shall be assessed against the rejecting party. Otherwise, the court may determine the assessment of such costs. If the court vacates an assessment of arbitration costs, it shall reassess those costs as justice requires.

(h) **Venue.** -- Venue shall be determined in accordance with the provisions of § 6-201 of this article.

(i) **Filing copy of verdict or other final disposition with Director.** -- The clerk of the court shall file a copy of the verdict or any other final disposition

with the Director. (1976, ch. 235, § 1; 1977, ch. 265; 1979, ch. 156; 1981, ch. 588; 1986, ch. 640; 1987, ch. 596; 1988, ch. 109, § 7; ch. 160; 1989, ch. 5, § 1; 1991, ch. 21, § 3; ch. 25.)

Excerpts from Brief of Appellant filed by Petitioners in the Court of Appeals of Maryland.

QUESTION PRESENTED

Under the Maryland Health Claims Arbitration Act, can an award on the merits in favor of a claimant be segregated into an award finding liability and an award assessing damages, so that the claimant can obtain court review of the damages amount alone when the health care provider has not properly rejected the liability finding?

ARGUMENT

THE TRIAL COURT ERRONEOUSLY SUBMITTED THE ISSUE OF DR. LEAHY'S LIABILITY TO THE JURY.

A. The Arbitration Panel's Determination Is Comprised Of Multiple Awards.

B. Dr. Leahy Was Required To File A Notice Of Rejection And An Action To Nullify To Obtain Court Review Of The Panel's Liability Decision.